

## Department of the Army, DoD

## § 516.65

normally will be accomplished by or through USACIDC or the cognizant DOD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

### § 516.64 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 209.406-3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at figure H-2, appendix G, to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of appendix D to this part.

(c) A comprehensive remedies plan will include at a minimum the following information and considerations:

- (1) Summary of allegations and investigative results.
- (2) Statement of any adverse impact on a DOD mission. DOD investigative organizations, commanders, or pro-

curement officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Fed. R. Crim. P. 32(c)(2).

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with figure H-3, appendix G, to this part.

### § 516.65 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

- (1) False Claims Act, 31 USC 3729.
- (2) Anti-Kickback Act, 41 USC 51.
- (3) Sherman Act, 15 USC 1-7.
- (4) Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961-1968.
- (5) Common law fraud.
- (6) Unjust enrichment.
- (7) Constructive trust.
- (8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 USC 218. See *K&R Engineering Co. v. United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD, the report should summarize the available evidence and applicable theories of recovery and be prepared under § 516.23 of this part. To avoid unnecessary duplication of effort, recovery reports may